



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

January 8, 1962

Honorable Herbert C. Petry, Jr.
Chairman, State Highway Commission
Austin 14, Texas

Opinion No. WW-1237

Re: Constitutionality of proposed bill which amends Article 9.25 of Chapter 9, Title 122A, Taxation General, and subsection (4b) of Section 2, Article XX, House Bill 8, Chapter 184, Acts Regular Session, 47th Legislature (Article 7083a, Vernon's Civil Statutes)

Dear Mr. Petry:

You have requested our opinion on the constitutionality of a proposed bill which amends Article 9.25, Chapter 9, Title 122A of the Revised Civil Statutes of Texas, 1925, as amended, and subsection (4b) of Section 2 of Article XX of House Bill 8, Chapter 184, Acts of the 47th Legislature, Regular Session.

Section 1 of the proposed bill amends Article 9.25, Chapter 9, Title 122A by repealing the amendment to Article 9.25 contained in Chapter 371, Acts of the 57th Legislature, Regular Session, 1961, adding thereto the following provision:

" . . . During any fiscal year, under the terms of Subsection 4b of Section 2 of Article XX of House Bill No. 8, Chapter 184, Acts of the Regular Session of the Forty-seventh Legislature, as amended, there shall be a valid, effective appropriation of \$15,000,000.00 in the Farm to Market Road Fund to the State Highway Department for the purpose of constructing Farm to Market Roads, the Highway Department may use up to one-half (1/2) the above remainder for the maintenance of Farm to Market Roads.

"All receipts due the Available School Fund which are in the Highway Motor Fuel Tax Fund on August 31st of each fiscal year shall be credited to the Available School Fund on August 31st of each fiscal year."

This amendment is accomplished by re-enacting Article 9.25 and adding the above quoted provision thereto.

Section 2 amends subsection 4b of Section 2 of Article XX of House Bill 8, Chapter 184, Acts of the Regular Session of the 47th Legislature, as amended (codified in Vernon's as Article 7083a, Vernon's Civil Statutes) by adding thereto the underlined portion of the following quote:

"The State Highway Department shall use the funds herein made available in conjunction with other funds available for such purposes so that a total of Twenty-Three Million Dollars (\$23,000,000) per year shall be used for the construction of additional miles of newly designated Farm to Market Roads, meaning roads in rural areas including feeder roads, secondary roads, school bus routes, rural mail routes, milk routes, etc., and not a part of the designated State Highway System or the designated Primary Federal Aid Highway System."

Section 3 of the proposed bill provides as follows:

"There is hereby appropriated to the State Highway Department from the Farm to Market Road Fund for the fiscal year beginning September 1, 1962 the sum of Fifteen Million Dollars (\$15,000,000), together with any balances in the Farm to Market Road Fund on hand at the beginning of said year. Said amount shall be allocated to the State Highway Department for the purpose of building Farm to Market Roads as prescribed by Chapter 51, Acts, Fifty-first Legislature, Regular Session, 1949, (Senate Bill No. 287) and amendments thereto; and it is further provided that any balances on hand in the Farm to Market Road Fund may be carried over from month to month and used for the purposes prescribed by said Act.

"The appropriation from the Farm to Market Road Fund for the fiscal year beginning September 1, 1961 contained in the General Appropriation Act (Senate Bill No. 1) passed by the 57th Legislature,

1st Called Session, 1961, and the appropriation made in the above paragraph shall be construed to be "current biennial appropriations" for the purpose of Subsection (5) of Section 2, Article XX of Chapter 184, Acts of the Forty-seventh Legislature, Regular Session, 1941, as amended, and none of the moneys in the Farm to Market Road Fund shall be transferred to the General Revenue Fund during the biennium beginning September 1, 1961."

Section 4 provides for severability and Section 5 provides the emergency clause.

The caption of the proposed bill provides:

"AN ACT amending Article 9.25 of Chapter 9, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, and Subsection (4b) of Section 2, Article XX, House Bill No. 8, Chapter 184, Acts of the Regular Session of the Forty-seventh Legislature, (Article 7083a), as amended, to provide for the maintenance of Farm to Market Roads and to require the expenditure of certain amounts for the construction of newly designated Farm to Market Roads; making certain appropriations; providing severability, and declaring an emergency."

A study of the body of the bill reveals that it conforms to the caption and therefore the proposed bill is in compliance with Section 35 of Article III of the Constitution of Texas. The proposed bill does nothing more than make an allocation of tax moneys and make an appropriation to the State Highway Department for the purposes stated in the bill and such appropriation is therefore supported by pre-existing law in compliance with Section 44 of Article III of the Constitution of Texas.

You are therefore advised that if the provisions of the proposed bill are enacted into law and the appropriation contained therein is certified by the Comptroller of Public Accounts in compliance with Section 49a of Article III of the Constitution of Texas, such Act will be constitutional and valid.

S U M M A R Y

The proposed bill which amends Article 9.25 of Chapter 9, Title 122A, Revised Civil Statutes

Honorable Herbert C. Petry, Jr., page 4 (WW-1237)

of Texas, 1925, as amended, and subdivision (4b) of Section 2, Article XX of House Bill No. 8, Chapter 184, Acts of the 47th Legislature, Regular Session, codified in Vernon's as Article 7083a, Vernon's Civil Statutes, if enacted into law will be constitutional and valid.

Yours very truly,

WILL WILSON
Attorney General of Texas


By John Reeves
Assistant

JR:dhs

APPROVED:

OPINION COMMITTEE:

Howard W. Mays, Chairman
Elmer McVey
Coleman Gay
Thomas Burrus
Pat Bailey

REVIEWED FOR THE ATTORNEY GENERAL
BY: Houghton Brownlee, Jr.